

Missouri State Public Defender System

Deputy Director's Office – Specialty Practices & Resources
1000 W. Nifong, Building 7, Suite 100
Columbia, Missouri 65203
Telephone: 573-777-9977 Fax: 573-777-9974

March 27, 2019

COPY

Eric Schmitt
Attorney General
Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102

Re: Church v. State of Missouri, et al., U.S. Dist. Ct. W.D. Mo. (No. 17-04057-CV-C-NKL)

Dear Mr. Schmitt:

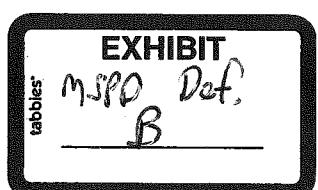
A trial date in this case has been set for August 2019. The Missouri State Public Defender Commission, which is the remaining party, is requesting coverage by the state legal expense fund.

Please let us know as soon as possible about our coverage.

Very truly yours,

J. Gregory Mermelstein
Deputy Director/General Counsel

c Jeremiah Morgan, Deputy Director, Civil Division





RE: Legal Expense Fund Coverage -- Dalton (formerly Church) v. Michael Barrett, et al. 17-04057-CV-NKL

Morgan, Jeremiah

to:

Greg.Mermelstein@mspd.mo.gov

05/06/2019 11:43 AM

Cc:

"Brady, Terry"

Hide Details

From: "Morgan, Jeremiah" <jeremiah.morgan@ago.mo.gov>

To: "Greg.Mermelstein@mspd.mo.gov" <Greg.Mermelstein@mspd.mo.gov>

Cc: "Brady, Terry" <Terry.Brady@ago.mo.gov>

History: This message has been forwarded.

Dear Greg,

I hope you had a nice weekend.

This e-mail is in relation to our recent communications about the *Church* (now *Dalton*) matter. I am very troubled at your responses in this matter. Even though this case involves important interests of the State of Missouri you have refused to inform us regarding the defense of the case, trial strategy, or any other details about the case, including the date and location of potential settlement discussions/mediation.

In light of these refusals we have no choice but to conclude that you have made an intentional decision to not cooperate or assist the Attorney General's office and instead have decided to obstruct our efforts to even be aware of how the interests of the State are being represented in this important case. This would be a forfeiture of any coverage under the legal expense fund with all the attendant consequences. See *Sherf v. Koster*, 371 S.W.3d 903, 909 (Mo. App. W.D. 2012) ("[T]he statute is clear that the Attorney General must be able to investigate and defend the claim. It specifically forbids payment of claims from the Fund where a defendant does not cooperate with the Attorney General in their defense [A party] cannot seriously claim that it is sufficient for purposes of Fund coverage that the Attorney General be able to argue the issues of costs and attorneys' fees after the defendant has already lost his case and the attorney fees and costs have already been incurred."); *Vasic v. State*, 943 S.W.2d 757, 759 (Mo. App. E.D. 1997) ("[F]und liability is not premised on the judgment creditor's notice but on the cooperation of the state employee. [F]ailure to cooperate by ... involving the attorney general in the settlement of the action prevents payment from the State Legal Expense Fund.").

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Furthermore, this will also serve to notify you that the Attorney General's office may take any appropriate steps to ensure that the State's interests are being adequately and appropriately defended in this suit.

With my warmest regards,

Jeremiah J. Morgan
Deputy Attorney General - Civil
Missouri Attorney General's Office
207 West High Street
Jefferson City, Missouri 65102
573.751.8145 (office) 573.291.1483 (cell)

From: Greg.Mermelstein@mspd.mo.gov [mailto:Greg.Mermelstein@mspd.mo.gov]
Sent: Tuesday, April 30, 2019 4:30 PM
To: Morgan, Jeremiah <jeremiah.morgan@ago.mo.gov>
Cc: Brady, Terry <Terry.Brady@ago.mo.gov>
Subject: RE: Legal Expense Fund Coverage -- Dalton (formerly Church) v. Michael Barrett, et al. 17-04057-CV-NKL

Hi, Jeremiah:

I have received your recent emails. First, regarding LEF coverage, we understand your position and what the statute requires and are discussing those issues internally. Regarding mediation, as you know, federal court requires that parties participate in mediation and that the rules of mediation require confidentiality. As a result, I am not at liberty to discuss matters beyond that.

Sincerely,

Greg Mermelstein
Deputy Director/General Counsel
Missouri State Public Defender
1000 W. Nifong, Bldg. 7, Ste. 100
Columbia, MO 65203
Tel: 573.777.9977 x 314
Greg.Mermelstein@mspd.mo.gov

From: "Morgan, Jeremiah" <jeremiah.morgan@ago.mo.gov>
To: "Greg.Mermelstein@mspd.mo.gov" <Greg.Mermelstein@mspd.mo.gov>
Cc: "Brady, Terry" <Terry.Brady@ago.mo.gov>
Date: 04/29/2019 04:04 PM
Subject: RE: Legal Expense Fund Coverage -- Dalton (formerly Church) v. Michael Barrett, et al. 17-04057-CV-NKL

Greg, just as a further follow-up on this e-mail, can you please tell me when and where the mediation is scheduled. Thank you so much.

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With my warmest regards,

Jeremiah J. Morgan
Deputy Attorney General - Civil
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From: Morgan, Jeremiah
Sent: Friday, April 26, 2019 8:10 AM
To: Greg.Mermelstein@mspd.mo.gov
Cc: Brady, Terry <Terry.Brady@ago.mo.gov>
Subject: RE: Legal Expense Fund Coverage -- Dalton (formerly Church) v. Michael Barrett, et al. 17-04057-CV-NKL

Thank you Greg,

As you know, in order for LEF coverage to apply there must be cooperation and assistance. Without it, there can be no coverage. If you disagree with the assertion that our interests are not aligned then there should be no problem with your coming and sharing with the Attorney General's Office the defense of the case, trial strategy, etc. And this is of immense importance to the Attorney General's Office as we protect the interests of the State, including claims against the Public Defender's Office and its director and commission members in their official capacities.

Please note that I am not suggesting the Public Defender's Office waive any attorney-client privilege or conflict of interest, particularly as the Attorney General's Office represents the interests of the State, including the Public Defender's Office and its director and commission members in their official capacities. There would not be a waiver. Indeed, please send copies of your files in the case, including attorney files so that we can evaluate the representation and status of the case.

Additionally, please let us know if there is any upcoming mediation or settlement discussions. We would like to talk about those discussions with you and participate.

With my warmest regards,

Jeremiah J. Morgan
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207 West High Street
Jefferson City, Missouri 65102
573.751.8145 (office) 573.291.1483 (cell)

From: Greg.Mermelstein@mspd.mo.gov [mailto:Greg.Mermelstein@mspd.mo.gov]
Sent: Friday, April 19, 2019 2:17 PM
To: Morgan, Jeremiah <jeremiah.morgan@ago.mo.gov>
Cc: Brady, Terry <Terry.Brady@ago.mo.gov>
Subject: RE: Legal Expense Fund Coverage -- Dalton (formerly Church) v. Michael Barrett, et al. 17-04057-CV-NKL

Hi, Mr. Morgan:

Thank you for the offer to meet with me on Monday. Usually I'd take you up on the offer, but in this particular case, I don't think it would be useful.

As you are probably aware, your Office represented the State and Governor in this case, and asked to be removed from the case, which you were. In addition, your Office moved to realign the parties in the case, and claimed that the Public Defender's interests weren't aligned with your clients' interests, i.e., that our interests were

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in conflict with your clients' interests. We disagree with that assertion, but that was your position.

As a result, we are not willing to waive attorney-client privilege or the conflict of interest in this case as a pre-condition to seeking LEF coverage. We do not believe it is appropriate for us to share defenses, trial strategy, or other details about the case. However, we believe it is appropriate -- indeed, required -- to reach out to request LEF coverage. Just like any litigation, we need to fully understand our exposure to liability as we move forward.

Thus, I'm respectfully declining your invitation on Monday since I would not be in a position to discuss the merits of the case. However, please let me know about our LEF coverage. Thank you.

Sincerely,

Greg Mermelstein
Deputy Director/General Counsel
Missouri State Public Defender
1000 W. Nifong, Bldg. 7, Ste. 100
Columbia, MO 65203
Tel: 573.777.9977 x 314
Greg.Mermelstein@mspd.mo.gov

From: "Morgan, Jeremiah" <jeremiah.morgan@ago.mo.gov>
To: "Greg.Mermelstein@mspd.mo.gov" <Greg.Mermelstein@mspd.mo.gov>
Cc: "Brady, Terry" <Terry.Brady@ago.mo.gov>
Date: 04/19/2019 01:30 PM
Subject: RE: Legal Expense Fund Coverage -- Dalton (formerly Church) v. Michael Barrett, et al. 17-04057-CV-NKL

I wanted to send a quick follow-up on this. Monday afternoon, April 22nd, would work well for Terry and I.

Jeremiah J. Morgan
Deputy Attorney General - Civil
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From: Morgan, Jeremiah
Sent: Thursday, April 18, 2019 3:23 PM
To: 'Greg.Mermelstein@mspd.mo.gov' <Greg.Mermelstein@mspd.mo.gov>
Cc: Brady, Terry <Terry.Brady@ago.mo.gov>
Subject: RE: Legal Expense Fund Coverage -- Dalton (formerly Church) v. Michael Barrett, et al. 17-04057-CV-NKL

Following up on your e-mail Greg, would you have time to come visit with Terry and I maybe next Monday – April 22nd - at the Supreme Court building. We would love to hear your plans regarding defense of the case, trial plan, etc.

With my warmest regards,

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Jeremiah J. Morgan
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207 West High Street
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From: Greg.Mermelstein@mspd.mo.gov [mailto:Greg.Mermelstein@mspd.mo.gov]
Sent: Wednesday, April 17, 2019 12:12 PM
To: Brady, Terry <Terry.Brady@ago.mo.gov>; Morgan, Jeremiah <jeremiah.morgan@ago.mo.gov>
Subject: Legal Expense Fund Coverage -- Dalton (formerly Church) v. Michael Barrett, et al. 17-04057-CV-NKL

Dear Mr. Brady and Mr. Morgan:

The Missouri Public Defender Commission and Public Defender Director Michael Barrett are the remaining defendants in the above lawsuit. I am representing them in the lawsuit. We recently received a scheduling order setting trial in this case in August 2019.

We are requesting coverage by the state legal expense fund. I briefly spoke with Mr. Morgan this morning about this, and he said to forward the scheduling order along to you and him so you could review the matter. Attached you will find the scheduling order.

I'll telephone you about coverage soon.

Thank you,

Greg Mermelstein
Deputy Director/General Counsel
Missouri State Public Defender
1000 W. Nifong, Bldg. 7, Ste. 100
Columbia, MO 65203
Tel: 573.777.9977 x 314
Greg.Mermelstein@mspd.mo.gov

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